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**UNITED STATES BANKRUPTCY COURT  
DISTRICT OF NEW JERSEY**

*In re*

TOMAS CRUZ, JR. and DANIA MARIA CRUZ,  
  
Debtors.

Chapter 13

Case No. 16-30154-CMG

Judge: Christine M. Gravelle

Hearing Date: March 1, 2017

Hearing Time: 10:00 a.m.

**OBJECTION OF INTERNAL REVENUE SERVICE TO CONFIRMATION  
OF DEBTORS' CHAPTER 13 PLAN**

THE UNITED STATES OF AMERICA, on behalf of the Internal Revenue Service (the "Service"), submits the following objection to confirmation of the above-captioned debtors' Chapter 13 Plan (the "Plan") [ECF Doc No. 2]. In support thereof, the Service respectfully represents as follows:

**RELEVANT BACKGROUND**

1. Tomas and Dania Cruz (the "Debtors") filed a voluntary joint petition under chapter 13 of Title 11 of the United States Code (the "Bankruptcy Code") on October 21, 2016 (the "Petition Date") [ECF Doc. No. 1].

2. The Debtors have unpaid federal income tax liabilities for numerous tax years. Prior to the Petition Date, the Service filed a Notice of Federal Tax Lien (the “Tax Lien”) against the Debtors in the Office of the Clerk of Middlesex County, New Jersey. Pursuant to 26 U.S.C. § 6321, the Tax Liens encumber all of the Debtors’ “property and rights to property, whether real or personal.”

3. The Service filed a proof of claim against the Debtors setting forth total claims of \$131,997.94 (the “Service Claim”), comprised of (i) a secured claim pursuant to 11 U.S.C. § 506(a) in the amount of \$54,945.97, which amount is secured by the Tax Lien; (ii) an unsecured priority claim pursuant to 11 U.S.C. § 507(a)(8) in the amount of \$67,375.13 (the “Priority Claim”); and (iii) an unsecured non-priority claim of \$9,676.84. *See* Claim No. 1-2.

4. For the reasons described below, the Plan is not confirmable.

### **OBJECTION**

#### **A. The Plan is Not Confirmable with Respect to the Service’s Secured Claim**

5. With respect to the Secured Claim, the Plan fails to comply with the provisions of Bankruptcy Code section 1325(a)(5), which requires, *inter alia*, that a Chapter 13 Plan provide for the retention of the secured creditor’s liens and full payment, plus interest. Contrary to section 1325(a)(5)’s requirements, the Plan provides for no payment of the Secured Claim. *See* Plan at 2-5.

6. Pursuant to Bankruptcy Code section 506(a), the Secured Claim must be calculated based on the value of the Service’s interest in estate property. 11 U.S.C. § 506(a). As noted above, the Secured Claim is secured by all of the Debtors’ real **and personal property**. 26 U.S.C. § 6321; *see also id.* § 6323 (setting forth entities against which tax lien is not valid or

senior in priority). According to the Debtors' own schedules, they have equity in personal property to which the Tax Lien attaches. *See* Debtor's Schedule A/B, Property [ECF Doc. No. 1] at 10-16. The Plan's failure to pay the Secured Claim to the full extent of the Debtors' equity in that property renders the Plan unconfirmable under section 1325(a)(5).

7. It bears noting that property claimed as exempt by the Debtors under Bankruptcy Code section 522 does not impact the allowed amount of the Secured Claim. 11 U.S.C. § 522(c)(2)(B) (mandating that "property exempted under this section is not liable during or after the case for any debt of the debtor . . . *except . . . a debt secured by a lien that is . . . a tax lien, notice of which was properly filed.*" (emphasis added)); *Paratore v. IRS (In re Paratore)*, 1995 Bankr. LEXIS 508, at \*9 (Bankr. D.N.J. 1995) ("It is clear from § 522(c)(2)(B), that Congress did not intend that any bankruptcy debtor could exempt any property from a perfected tax lien."); *see also Downey v. Georgia (In re Downey)*, 2006 Bankr. LEXIS 2737, at \*4 (Bankr. N.D. Ga. Sept. 27, 2006) ("The Debtors' estate has an interest in the motor vehicles and personal property, and the Debtor cannot exempt those assets from a tax lien, notice of which is properly filed . . . If the tax lien was properly filed, then, the State has a secured claim to the extent of the value of the Debtors' assets . . . The Debtors' chapter 13 plan must provide for payment of the value of this claim or surrender the assets to the State." (internal quotation marks omitted)).

8. In addition to the foregoing, the Plan is also not confirmable with respect to the Secured Claim for the following reasons:

- a. It fails to provide that the Service will retain its liens against the property of the Debtors. 11 U.S.C. § 1325(a)(5)(B)(i)(I).

b. It fails to provide for an adequate rate of interest on the Secured Claim. *Id.*

§ 1325(a)(5)(B)(ii); *In re Princeton Office Park, L.P.*, 423 B.R. 795, 806 (Bankr. D.N.J. 2010) (recognizing that section 1325(a)(5)(B)(ii) requires payment of an appropriate rate of interest on secured claims). The Service submits that the interest rate established by 26 U.S.C. § 6621 and the regulations thereunder (4%), should be applied to deferred payments of federal taxes.

### **CONCLUSION**

WHEREFORE, for the foregoing reasons, the Service requests that the Court (i) deny confirmation of the Plan until such time as the above-referenced defects in the Plan are cured; and (ii) grant any other and further relief that the Court deems just and proper.

Dated: February 21, 2017

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